

MARYLAND REGISTER

Proposed Action on Regulations

Transmittal Sheet PROPOSED OR REPROPOSED Actions on Regulations	Date Filed with AELR Committee	TO BE COMPLETED BY DSD
		Date Filed with Division of State Documents
		Document Number
		Date of Publication in MD Register

1. Desired date of publication in Maryland Register: 6/13/2014

2. COMAR Codification

Title Subtitle Chapter Regulation

14 09 03 05

3. Name of Promulgating Authority

Workers Compensation Commission

4. Name of Regulations Coordinator

Amy Lackington

Telephone Number

410-864-5300

Mailing Address

10 E. Baltimore Street

City State Zip Code

Baltimore MD 21202

Email

alackington@wcc.state.md.us

5. Name of Person to Call About this Document

Amy S. Lackington

Telephone No.

410-864-5302

Email Address

alackington@wcc.state.md.us

6. Check applicable items:

☐ New Regulations

☒ Amendments to Existing Regulations

Date when existing text was downloaded from COMAR online: 4/21/14.
☐ Repeal of Existing Regulations
☐ Recodification
☐ Incorporation by Reference of Documents Requiring DSD Approval
☐ Reproposal of Substantively Different Text:
: Md. R
(vol.) (issue) (page nos) (date)
Under Maryland Register docket no.: --P.

7. Is there emergency text which is identical to this proposal:

☐ Yes ☒ No

8. Incorporation by Reference

☐ Check if applicable: Incorporation by Reference (IBR) approval form(s) attached and 18 copies of documents proposed for incorporation submitted to DSD. (Submit 18 paper copies of IBR document to DSD and one copy to AELR.)

9. Public Body - Open Meeting

X- OPTIONAL - If promulgating authority is a public body, check to include a sentence in the Notice of Proposed Action that proposed action was considered at an open meeting held pursuant to State Government Article, §10-506(c), Annotated Code of Maryland.

X- OPTIONAL - If promulgating authority is a public body, check to include a paragraph that final action will be considered at an open meeting.

10. Children's Environmental Health and Protection

☐ Check if the system should send a copy of the proposal to the Children's Environmental Health and Protection Advisory Council.

11. Certificate of Authorized Officer

I certify that the attached document is in compliance with the Administrative Procedure Act. I also certify that the attached text has been approved for legality by H. Scott Curtis, Assistant Attorney General, (telephone #410-864-5313) on May 13, 2014. A written copy of the approval is on file at this agency.

Name of Authorized Officer

R. Karl Aumann

Title

Chairman

Date

May 13, 2014

Telephone No.

410-864-5300

Title 14
INDEPENDENT AGENCIES

Subtitle 09 WORKERS' COMPENSATION COMMISSION

14.09.03 Hearing Procedures

Authority: Health General Article, §§ 4-303 and 4-305; Labor and Employment Article, §§ 9-309, 9-310, 9-311, 9-602, 9-625, 9-635, 9-701, 9-717, 9-720, 9-721, 9-726, 9-731 and 9-739, Annotated Code of Maryland.

Notice of Proposed Action

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The Workers' Compensation Commission proposes to amend Regulation .05 under COMAR 14.09.03 Hearing Procedures to comply with § 9-311 of the Labor and Employment Article, Annotated Code of Maryland.

This action was considered at a public meeting held on May 8, 2014, notice of which was given by publication in 41:8 Md.R. 503 (April 18, 2014)

Statement of Purpose

The purpose of this action is to amend COMAR 14.09.03.05 to conform to recent changes to § 9-311 of the Labor and Employment Article, Annotated Code of Maryland.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

The proposed action has no economic impact.

Economic Impact on Small Businesses

The proposed action has minimal or no economic impact on small businesses.

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Amy S. Lackington, Administrator, Workers' Compensation Commission, 10 E. Baltimore Street, 7th Floor, or call 410-864-5302, or email to alackington@wcc.state.md.us, or fax to 410-864-5301. Comments will be accepted through July 14, 2014. A public hearing has not been scheduled.

Open Meeting

Final action on the proposal will be considered by the Workers' Compensation Commission during a public meeting to be held on August 14, 2014, at 10 E. Baltimore Street, Baltimore, MD 21202.

Economic Impact Statement Part C

- A. Fiscal Year in which regulations will become effective: FY 2015
- B. Does the budget for the fiscal year in which regulations become effective contain funds to implement the regulations?
No
- C. If 'yes', state whether general, special (exact name), or federal funds will be used:
- D. If 'no', identify the source(s) of funds necessary for implementation of these regulations:
No additional funds are necessary for the implementation of these regulations.
- E. If these regulations have no economic impact under Part A, indicate reason briefly:
The proposed changes have no economic impact under Part A.
- F. If these regulations have minimal or no economic impact on small businesses under Part B, indicate the reason and attach small business worksheet.
The proposed changes have minimal or no economic impact on small businesses under Part B.
- G. Small Business Worksheet:
N/A

Attached Document:

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Subtitle 09 WORKERS' COMPENSATION COMMISSION

03 Hearing Procedures

Authority: Health General Article, §§ 4-303 and 4-305; Labor and Employment Article, §§ 9-309, 9-310, 9-311, 9-602, 9-625, 9-635, 9-701, 9-717, 9-720, 9-721, 9-726, 9-731 and 9-739, Annotated Code of Maryland.

14.09.03.05 (4/21/14)

.05 Subpoenas.

A. Use of Subpoenas.

(1) A subpoena is required to compel the person to whom it is directed to attend, give testimony, and produce designated documents or tangible things at a Commission proceeding or at a deposition held pursuant to Labor and Employment Article, §9-719(b), Annotated Code of Maryland.

(2) *On a request of a party to a claim on which issues are currently pending, the Commission shall issue a subpoena for relevant documentation to be produced at the office of the requesting party and distributed to all parties to the claim in accordance with §G of this regulation.*

B. Procedure for Obtaining Subpoena.

(1) On the request of an attorney entitled to the issuance of a subpoena the Commission shall issue a subpoena signed and sealed but otherwise blank that shall be filled in before service.

(2) On the request of a non-attorney individual entitled to the issuance of a subpoena the Commission shall provide a blank form of the subpoena which shall be filled in and returned to the Commission clerk to be signed and sealed before service.

(3) To the extent practicable, subpoenas shall be served at least 10 days before the hearing.

C. Form of Subpoena.

(1) Every subpoena shall contain:

- (a) The caption of the claim and claim number;
- (b) The name and address of the person to whom it is directed;
- (c) The name of the person at whose request it is issued;
- (d) The date, time, and place where attendance is required; and
- (e) A description of any documents or tangible things to be produced.

D. Medical Records Subpoenas.

(1) Every subpoena seeking the production of medical records shall comply with Health General Article, §4-306, Annotated Code of Maryland.

(2) A party seeking medical records by subpoena shall:

- (a) Complete the Notice of Intent to Subpoena Medical Records and Certificate of Service form; and
- (b) Send by certified mail a copy of the Notice of Intent to Subpoena Medical Records to the person in interest and his or her counsel.

(3) Within 30 days of the date that the Notice of Intent to Subpoena Medical Records was mailed, a person in interest may oppose the disclosure of his or her medical records by:

- (a) Filing the Objection to Subpoena of Medical Records form with the Commission; and
- (b) Sending a copy of the Objection form to all parties by first class mail.

(4) Upon receipt of an Objection to Subpoena of Medical Records, the Commission shall schedule a hearing to determine:

- (a) Whether the subpoena should be quashed;
- (b) Whether the subpoena should be limited in scope or otherwise modified; and
- (c) Other appropriate relief.

E. Service of Subpoenas.

(1) Subpoenas may be served by:

- (a) Personal delivery by an individual 18 years old or older who is not a party to the proceeding or related by blood or marriage to a party to the proceeding; or
- (b) Certified mail to the person at the address specified in the subpoena request.

(2) The subpoena may not be enforced pursuant to Labor and Employment Article, §9-717, Annotated Code of Maryland, absent proof of service by certified mail or personal delivery.

(3) Costs of certified mailing or personal delivery of the subpoena are the responsibility of the person requesting the service.

(4) Proof of service by certified mail or personal delivery is the responsibility of the person requesting the subpoena.

F. Return of service shall be made as follows:

- (1) When service is by certified mail, by the filing of the original return receipt; or
- (2) When service is by personal delivery, by the filing of an affidavit, signed by the individual who made service, containing:

- (a) The name of the individual served;
- (b) The date on which the individual was served;
- (c) The particular place of service; and
- (d) A statement that the server is 18 years old or older and not a party to the proceeding or related by blood or marriage to a party to the proceeding.

G. Distribution of Documentation. Except as otherwise provided by law, the requesting party shall serve promptly on all other parties to the claim copies of all documentation produced in response to a subpoena.

[G] H. Enforcement of Subpoenas.

(1) If an individual fails to comply with a properly served subpoena, pursuant to Labor and Employment Article, §9-717, Annotated Code of Maryland, the party wishing to enforce the subpoena shall file with the Commission a written request for the enforcement of the subpoena.

(2) The request shall:

- (a) State, with specificity:
 - (i) When and how the subpoena was served; and
 - (ii) Why the testimony or documents sought are necessary for the resolution of the issue; and
- (b) Be accompanied by copies of the subpoena, and any certificate of service, return receipt, or affidavit.

(3) Upon determining that the subpoena was issued and served in compliance with the law, the Commission may and, on request of a party to the proceeding, shall apply to the appropriate circuit court for an order to show cause why the individual should not be imprisoned for failing to comply with a subpoena.

I. Sanctions. If the Commission, after an evidentiary hearing, determines that a subpoena was requested in bad faith, the Commission may assess against the requesting party the whole cost of the proceeding, including reasonable attorney's fees.